IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 403 of 2001
With
SPECIAL CIVIL APPLICATION No. 1957 of 2003
With
SPECIAL CIVIL APPLICATION No. 5817 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KODINAR MUNICIPALITY - Petitioner(s)

Versus

MORI ARJANBHAI BHIMABHAI & 7 - Respondent(s)

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Appearance :

SCA No.403 of 2001

MR YV SHAH for Petitioner(s) : 1,
MR RAMESH V SAVANIA for Respondent(s) : 1,
MR MAHENDRA K PATEL for Respondent(s) : 2 – 8.

SCA Nos.1957 & 5817 of 2003

MR RAMESH V. SAVANIA for the petitioners

MR YV SHAH for respondent No.1

MR DIPEN DESAI, AGP for respondent Nos.2 & 3.

Rule served for respondent No.4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/09/2005

ORAL JUDGMENT

Since common questions of law and facts are involved, these petitions were heard together and are being disposed of by this common judgment.

2. Special Civil Application No.403 of 2001 has been filed by the Kodinar Municipality challenging the order dated 11th October 2000 passed by the Labour Court, Amreli in which the Labour Court was pleased to declare that the provisions of the Industrial Employment (Standing Orders) Act would apply to the petitioner and was further pleased to declare that the workmen concerned who were applicants before the Labour Court are permanent employees of the Corporation.

3. Special Civil Application Nos.5817 of 2003 and 1957 of 2003 have been filed by the workmen concerned who are 7 in number. By way of these petitions, the concerned workmen have challenged their termination as being illegal, arbitrary and unlawful.

4. The workmen concerned had approached the Labour Court by filing application under section 13-A and 13-B of the Industrial Employment (Standing Orders) Act, 1946. The application came to be allowed by the impugned order dated 11.10.2000 passed by the Labour Court, Amreli.

5. Learned advocate Shri Y.V.Shah appearing for the petitioner Nagarpalika submitted that the Labour Court exceeded its jurisdiction and passed the order which could not have been passed under the provisions of Industrial Employment (Standing Orders) Act. It was contended that the Labour Court does not have the power to grant any relief under the provisions of the said Act and at best the Labour Court can give a declaration. Reliance was placed on a decision of this Court in C.L.Chandsara v. Lubi Electricals Ltd. reported in 2000 (1) GLR 107. In the alternative, it was submitted that in any case, the Labour Court could not have granted benefits of permanency in favour of the workmen. It was argued that the workmen were not regularly recruited employees of the Municipality and they were also not appointed on regular establishment. Basing reliance on the Full Bench decision of this Court in the case of Amreli Municipality v. Gujarat Pradesh Municipal

Employees Union, 2004 (3) GLR 1841, it was contended that the Labour Court erred in holding that the workmen are entitled to be treated as permanent employees of the Municipality.

6. Learned advocate Shri Ramesh Savania appearing for the workmen resisted the petition. It was contended that the Labour Court has only granted a declaration and that therefore no illegality has been committed by the Labour Court.

7. From the above discussion, it can be seen that by the impugned order, the Labour Court was pleased to provide that the workmen concerned would be considered as permanent employees of the Municipality. In the case of Amreli Municipality (supra), Full Bench of this High Court has held that the Labour Court or the Industrial Tribunal has no jurisdiction to issue direction or to pass award regularizing the services of the employees of Municipalities or Local Authorities without there being any sanctioned set up and no person can be regularized if such a person had entered the service without following the selection process under the title of daily rated employee. In view of this decision, the order passed by

the Labour Court cannot be sustained. The impugned order dated 11th October 2000 is therefore quashed and set aside.

8. In so far as Special Civil Application Nos.5817 of 2003 and 1957 of 2003 are concerned, as noted earlier, the workmen concerned have filed these petitions challenging their termination orders passed by the Municipality. It was contended that the termination orders were bad in law and opposed to the provisions of the Industrial Disputes Act. It was further contended that this Court by an order dated 6th March 2002 passed in Civil Application No.1686 of 2002 in Special Civil Application No.403 of 2001 had directed not to terminate the services of the workmen till the final disposal of the main petition. It was contended that during the currency of the said interim order, the authorities terminated the services of the workmen.

9. On the other hand, learned advocate Shri Y.V.Shah appearing for the Municipality submitted that the bus service which the Municipality was operating was wound up and therefore, services of all workmen were terminated after following due procedure of law and paying them

notice pay and retrenchment compensation as required. It was contended that the order passed by the learned single Judge on 6th March, 2002 in Civil Application No.1686 of 2002 was requested to be reviewed and when declined, Letters Patent Appeal was filed in which the Division Bench was pleased to grant stay against the operation of the order by an order dated 9.9.2004. He further submitted that the workmen had also filed a contempt petition before this Court. However, the same came to be dismissed by a Division Bench by the order dated 28th October 2002 passed in Misc. Civil Application No.1368 of 2002. With respect to the legality of the termination order, he submitted that apart from the orders being proper and legal, the appropriate remedy available to the workmen would be to raise an industrial dispute and they cannot directly file a petition before the High Court.

10. Having considered the rival submissions, it appears that though there was an interim order passed by this Court on 6th March, 2002 against termination of the workmen, subsequently, this order was stayed by the Division Bench in Letters Patent Appeal. In any case, contempt petition filed by the workmen was dismissed by the Division Bench. It is, therefore, not possible to

strike down the termination orders only on the ground that the same were opposed to the interim order passed by this Court.

11. With respect to the legality of the termination orders, it can be noted that the challenge to such orders would involve number of disputed questions and questions involving provisions of the Industrial Disputes Act. In the case of U.P.State Bridge Corporation Limited v. U.P.Rajya Setu Nigam S. Karmachari Sangh., (2004) 4 SCC 268, the Hon'ble Supreme Court was pleased to observe as under:

> “11. We are of the firm opinion that the High Court erred in entertaining the writ petition of the respondent Union at all. The dispute was an industrial dispute both within the meaning of the Industrial Disputes Act,1947 as well as U.P.IDA,1947. The rights and obligations sought to be enforced by the respondent Union in the writ petition are those created by the Industrial Disputes Act. In *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke* it was held that when the dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the claimant is to get adjudication under the Act. This was because the Industrial Disputes Act was made to provide -

"a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill-afford. The procedures followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and remake the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This

> legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them."

> 12. Although these observations were made in the context of the jurisdiction of the civil court to entertain the proceedings relating to an industrial dispute and may not be read as a limitation on the Court's powers under Article 226, nevertheless it would need a very strong case indeed for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner."

12. In view of the above discussion, I find it appropriate that the workmen concerned should raise industrial dispute challenging their termination if they are aggrieved by the same and the present petitions would not be possible to be entertained and same the are hereby rejected.

13. In the result, Special Civil Application No.403 of 2001 is allowed. Rule is made absolute accordingly. Special Civil Application Nos.5817 of 2001 and 1957 of 2001 are rejected. Rule is discharged. No order as to

costs.

(Akil Kureshi, J.)

(vjn)